

FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK
REMEDIES ACT 36 OF 1947

[ASSENTED TO 3 JUNE 1947] [DATE OF COMMENCEMENT: 1 JUNE
1948

but made applicable in Namibia only with effect
from 1 July 1972 by Act 17 of 1972]

(Signed by the President)

as amended by

Fertilizers, Farm Feeds, Seeds and Remedies Amendment Act 48 of 1950

Seeds Act 28 of 1961

Fertilizers, Farm Feeds and Remedies Amendment Act 60 of 1970

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies
Amendment Act 17 of 1972

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies
Amendment Act 24 of 1977

ACT

To provide for the appointment of a Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies; for the registration of fertilizers, farm feeds, agricultural remedies and stock remedies; to regulate or prohibit the importation, sale, acquisition, disposal or use of fertilizers, farm feeds, agricultural remedies and stock remedies; to provide for the designation of technical advisers and analysts; and to provide for matters incidental thereto.

[Long title amended by sec 3 of Act 48 of 1950 and by sec 44 of Act 28 of 1961 and substituted by sec 16 of Act 60 of 1970 and by sec 22 of Act 24 of 1977.]

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[a36y1947s1]1 Definitions

In this Act, unless the context otherwise indicates-

"advertisement" means any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference distributed to members of the public or brought to their notice in any other manner and which is intended to promote the sale of fertilizers, farm feeds, agricultural remedies or stock remedies or encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof;

[Definition of "advertisement" substituted by sec 1(a) of Act 24 of 1977.]

"agricultural remedy" means any chemical substance or biological remedy, or any mixture or combination of any substance or remedy intended or offered to be used-

(a) for the destruction, control, repelling, attraction or prevention of any undesired microbe, alga, nematode, fungus, insect, plant, vertebrate, invertebrate, or any product thereof, but excluding any chemical substance, biological remedy or other remedy in so far as it is controlled under the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965), or the Hazardous Substances Act, 1973 (Act 15 of 1973); or

(b) as plantgrowth regulator, defoliant, desiccant or legume inoculant, and anything else which the Minister has by notice in the Gazette declared an agricultural remedy for the purposes of this Act;

[Definition of "agricultural remedy" inserted by sec 1(a) of Act 60 of 1970 and substituted by sec 1(b) of Act 24 of 1977.]

"analyst" means a person appointed as such in terms of section fourteen;

"board" means any board appointed by the Minister in terms of section 6;

[Definition of "board" inserted by sec 1(c) of Act 24 of 1977.]

"establishment", in relation to a fertilizer, farm feed, agricultural remedy or stock feed, means the premises where such fertilizer, farm feed, agricultural remedy or stock feed is manufactured, controlled, packed, marked or labelled for the purposes of sale;

[Definition of "establishment" inserted by sec 1(c) of Act 24 of 1977.]

"brand"

[Definition of "brand" deleted by sec 1(d) of Act 24 of 1977.]

"farm feed" means-

(a) (i) any substance obtained by a process of crushing, gristing or grinding, or by the addition to any substance or the removal therefrom of any ingredient; or

(ii) any condimental food, vitamin or mineral substance or other substance which possesses or is alleged to possess nutritive properties; or

(iii) any bone product,

intended or sold for the feeding of domestic animals or livestock; or

(b) any stock lick or substance which can be and is used as a stock lick, whether or not such stock lick or substance possesses medicinal properties, but does not include straw, chaff, unground hay, silage, any cereal in the grain or any substance which would otherwise be a farm feed but has been ground, crushed, gristed or prepared for any person, in accordance with his directions for his own use, unless the Minister has by notice in the Gazette declared such substance a farm feed for the purposes of this Act;

[Definition of "farm feed" substituted by sec 1(e) of Act 24 of 1977.]

"farming requisite"

[Definition of "farming requisite" substituted by sec 1(b) of Act 60 of 1970 and deleted by sec 1(f) of Act 24 of 1977.]

"fertilizer" means any substance which is intended or offered to be used for improving or maintaining the growth of plants or the productivity of the soil;

"mark" means a mark as defined in section 1 of the Trade Marks Act, 1963 (Act 62 of 1963);

[Definition of "mark" inserted by sec 1(g) of Act 24 of 1977.]

"inspector"

[Definition of "inspector" deleted by sec 1(h) of Act 24 of 1977.]

"Minister" means the Minister of Agriculture;

[Definition of "Minister" substituted by sec 1(e) of Act 60 of 1970.]

"officer" means an officer as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957);

[Definition of "officer" inserted by sec 1(i) of Act 24 of 1977.]

"prescribed" means prescribed by regulation under this Act;

"registrar" means the Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies designated in terms of section 2, and includes an officer acting under a delegation from or under the control or direction of the registrar;

[Definition of "registrar" inserted by sec 1(j) of Act 24 of 1977.]

"regulation" means any regulation made under this Act;

[Definition of "regulation" inserted by sec 1(j) of Act 24 of 1977.]

"Republic" includes the territory of South-West Africa;

[Definition of "Republic" inserted by sec 1 of Act 17 of 1972.]

"remedy"

[Definition of "remedy" deleted by sec 1(d) of Act 60 of 1970.]

"Secretary"

[Definition of "secretary" substituted by sec 1(e) of Act 60 of 1970 and deleted by sec 1(k) of Act 24 of 1977.]

"seed"

[Definition of "seed" deleted by sec 32 of Act 28 of 1961.]

"sell" includes agree to sell, or to offer, advertise, keep, expose, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid; and "sale" has a corresponding meaning;

[Definition of "sell" substituted by sec 1(l) of Act 24 of 1977.]

"sterilizing plant" means a plant used for sterilizing of bones or other substances derived from cattle, members of the horse family, sheep, goats, pigs, poultry or ostriches, of any age, or from any vertebrate or invertebrate specified by the Minister from time to time by notice in the Gazette;

[Definition of "sterilizing plant" substituted by sec 1(f) of Act 60 of 1970.]

"stock remedy" means a substance intended or offered to be used in connection with domestic animals, livestock, poultry, fish or wild animals (including wild birds), for the diagnosis, prevention, treatment or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth, production or working capacity, but excluding any substance in so far as it is controlled under the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

[Definition of "stock remedy" inserted by sec 1(g) of Act 60 of 1970 and substituted by sec 1(m) of Act 24 of 1977.]

"technical adviser" means a technical adviser designated in terms of section 14;

[Definition of "technical adviser" inserted by sec 1(n) of Act 24 of 1977.]

"this Act" includes any regulations thereunder.

[a36y1947s2]2 Designation of registrar

(1) The Minister shall designate an officer in the Department of Agricultural Technical Services as the Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies who shall, subject to any instructions issued by the Minister, exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the registrar under this Act.

(2)(a) Any power conferred upon, function assigned to or duty imposed upon the registrar may be exercised, performed or carried out by an officer under a delegation from or under the control or direction of the registrar.

(b) Any decision made or instruction issued by any such officer may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purpose of this paragraph, to have been made or given by the registrar.

[Sec 2 amended by sec 2 of Act 60 of 1970 and substituted by sec 2 of Act 24 of 1977.]

[a36y1947s3]3 Registration of fertilizers, farm feeds, agricultural remedies and stock remedies

(1) Every application for the registration of a fertilizer, farm feed, agricultural remedy or stock remedy shall be submitted to the registrar in the form determined by the registrar and shall be accompanied by the prescribed registration fee, and any person so applying shall supply or make available to the registrar, in the manner and at the time and place that he determines, the samples and other particulars that he specifies.

(2) If, after consideration of any such application and after such investigation and enquiry as he may deem necessary, the registrar is satisfied that the fertilizer, farm feed, agricultural remedy or stock remedy in question is suitable and sufficiently effective for the purposes for which it is intended, and complies with such requirements as may be prescribed, and that it is not contrary to the public interest that it be registered, and that the establishment where it is manufactured is suitable for such manufacture, he shall register such fertilizer, farm feed, agricultural remedy or stock remedy.

(3) Any registration under this section may be made subject to such conditions as may be determined by the registrar and shall be valid for such period as may be prescribed and the registrar shall issue in respect of such registration a certificate of registration to the person applying therefor.

[Sec 3 substituted by sec 3 of Act 60 of 1970 and by sec 3 of Act 24 of 1977.]

[a36y1947s4]4 Cancellation of registration

The registrar may cancel the registration of any fertilizer, farm feed, agricultural remedy or stock remedy at any time if he is satisfied-

(a) that any person has failed to comply with any condition subject to which such fertilizer, farm feed, agricultural remedy or stock remedy has been registered;

(b) that such fertilizer, farm feed, agricultural remedy or stock remedy is not of the composition and efficacy specified in the application for registration thereof, does not possess the chemical, physical and other properties so specified and does not comply with any requirements that may be prescribed;

(c) that the practices followed and facilities available at or in respect of the establishment or the operation of the undertaking at such establishment are not suitable for the manufacture of the fertilizer, farm feed, agricultural remedy or stock remedy concerned, or that the prescribed records and information are not kept there or furnished in respect thereof;

(d) that the person managing such undertaking does not have sufficient knowledge of the relevant provisions of this Act or of the practices to be followed in the operation of such undertaking;

(e) that it is contrary to the public interest that such fertilizer, farm feed, agricultural remedy or stock remedy, shall remain registered; or

(f) that any incorrect or misleading advertisement is used in connection with such fertilizer, farm feed, agricultural remedy or stock remedy.

[Sec 4 substituted by sec 4 of Act 60 of 1970 and by sec 4 of Act 24 of 1977.]

[a36y1947s4A]4A Availability lapse and return of certificate of registration

(1) The person to whom a certificate of registration has been issued in respect of any fertilizer, farm feed, agricultural remedy or stock remedy shall cause that certificate of registration or a copy thereof to be available for inspection by the registrar at all times at the establishment where such fertilizer, farm feed, agricultural remedy or stock remedy is manufactured.

(2) The registration of any fertilizer, farm feed, agricultural remedy or stock remedy and the certificate of registration issued in respect of such registration shall lapse-

(a) if the person to whom that certificate of registration has been issued, ceases to manufacture or sell the fertilizer, farm feed, agricultural remedy or stock remedy in question; or

(b) if the establishment in question is no longer used for the manufacture of such fertilizer, farm feed, agricultural remedy or stock feed.

(3) When the registration of any fertilizer, farm feed, agricultural remedy or stock remedy has lapsed in terms of subsection (2) or has been cancelled in terms of section 4, the certificate of registration in question shall, within the prescribed period, be returned to the registrar by the person to whom it was issued.

[Sec 4A inserted by sec 5 of Act 24 of 1977.]

[a36y1947s5]5 Furnishing of reasons for refusal of, determination of conditions on or cancellation of registration

If-

(a) any application for registration in terms of this Act is refused;

(b) conditions are determined under section 3(3) on registration; or

(c) any registration is cancelled in terms of section 4,

the registrar shall in writing furnish the applicant concerned or the person to whom the certificate of registration in question was issued, with the reasons for such refusal, determination of conditions or cancellation, as the case may be.

[Sec 5 substituted by sec 6 of Act 24 of 1977.]

[a36y1947s6]6 Appeal against decisions of registrar

(1) A person who feels aggrieved by any decision referred to in section 5 may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the Minister against such decision.

(2) The Minister shall refer the appeal for consideration and decision to a board of which the members shall be appointed by him, and which shall consist of-

(a) one person designated as chairman on account of his knowledge of law; and

(b) two persons who in the opinion of the Minister command sufficient knowledge regarding the matters which will probably be in issue when the appeal is considered.

(3) Any appeal noted in terms of subsection (1) shall be heard on the date and at the time and place fixed by the chairman of the board and he shall advise the appellant and the registrar in writing thereof.

(4) The chairman of the board may for the purposes of the decision of an appeal-

(a) summon any person who, in his opinion, may give relevant information concerning the issues in the appeal or who has or is suspected to have in his

possession or custody or under his control any document which has any bearing upon the issues in the appeal, to appear before the board at a time and place specified in the summons, to be interrogated or to produce that document, and the chairman may retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing of the appeal;

(c) call any person present at the hearing of the appeal as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

(5) The procedure at the hearing of an appeal shall be determined by the chairman of the board in question.

(6) Any person appealing in terms of this section and the registrar may be represented at the hearing of such appeal by an advocate or an attorney.

(7) If a person appointed under subsection (2)-

(a) dies during the hearing of the appeal or so soon before the commencement of such hearing that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the hearing has commenced, unable to continue therewith, the appellant and the registrar may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to act as chairman.

(8)(a) If the parties do not agree under subsection (7), the hearing shall be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2), in the place of the member who has died or has become incapacitated.

(b) Where an appointment has been made in terms of paragraph (a), the hearing shall, if the parties so agree, be continued as from the stage at which the hearing was interrupted by the death or incapacitation of the member in question, or shall, if the parties do not so agree, be commenced de novo.

(9) The board may after hearing and considering the appeal-

(a) confirm, set aside or vary the relevant decision of the registrar;

(b) order the registrar to execute the decision of the board in connection therewith.

(10) The chairman of the board shall notify the appellant and the registrar in writing of the decision of the board.

(11) if the board sets aside any decision by the registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him or, if the board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

(12) A member of the board who is not in the full-time service of the State may be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

[Sec 6 substituted by sec 7 of Act 24 of 1977.]

[a36y1947s7]7 Sale of fertilizers farm feeds agricultural remedies and stock remedies

(1) No person shall sell any fertilizer, farm feed, agricultural remedy or stock remedy unless-

(a) it is registered under this Act under the name or mark under which it is so sold: Provided that a fertilizer, farm feed, agricultural remedy or stock remedy in respect of which the period of validity of the registration has expired, the certificate of registration has been cancelled in terms of section 4 or has lapsed in terms of section 4A(2) and which, before or on the date of such cancellation or lapse, was no longer under the control of or owned by the person to whom that certificate of registration was issued, may, subject to the provisions of section 7bis, be sold;

(b) it is, subject to the provisions of paragraph (c), packed in such manner and mass or volume as may be prescribed;

(c) the container in which it is sold, complies with the prescribed requirements and is sealed and labelled or marked in such manner as may be prescribed or, if it is not sold in a container, it is accompanied by the invoice referred to in section 9; and

(d) it is of the composition and efficacy specified in the application for registration thereof possesses all chemical, physical and other properties so specified, and complies with the prescribed requirements.

(2)(a) No person shall for reward or in the course of any industry, trade or business use, or recommend the use of any agricultural remedy or stock remedy for a purpose or in a manner other than that specified on the label on a container thereof or described on such container.

(b) The provisions of paragraph (a) shall, in the case of a stock remedy, not apply to a veterinarian registered under the Veterinary Act, 1933 (Act 16 of 1933). [Sec 7 substituted by sec 5 of Act 60 of 1970 and by sec 8 of Act 24 of 1977.] [a36y1947s7bis]7bis Prohibition on acquisition, disposal, sale or use of certain fertilizers, farm feeds, agricultural remedies and stock remedies

(1) The Minister may by notice in the Gazette-

(a) prohibit the acquisition, disposal, sale or use of fertilizers, farm feeds, agricultural remedies or stock remedies; or

(b) prohibit such acquisition, disposal, sale or use, except in accordance with such conditions as may be specified in the notice or except under the authority of and in accordance with such conditions as may be specified in a permit issued by the registrar, and may in like manner repeal or amend any such notice.

(2) Any prohibition issued under subsection (1) may apply-

(a) throughout the Republic or in one or more specified areas;

(b) to any person or to persons belonging to any specified class or group of persons or to persons other than persons belonging to any such class or group of persons; or

(c) in respect of all or one or more classes or kinds of fertilizers, farm feeds, agricultural remedies or stock remedies.

(3) Any condition referred to in subsection (1) shall not be subject to any limitations of whatever nature, and such conditions may differ in respect of different areas, persons or classes or groups of persons.

[Sec 7bis inserted by sec 1 of Act 48 of 1950 and substituted by sec 6 of Act 60 of 1970 and by sec 9 of Act 24 of 1977.]

[a36y1947s8]8 Use of sterilizing plant

No person shall use any sterilizing plant unless such plant has been registered in terms of section three.

[a36y1947s9]9 Invoices required in case of sale of fertilizers, farm feeds, agricultural remedies and stock remedies not in a container

Any person who sells any fertilizer, farm feed, agricultural remedy or stock remedy not in a container, shall give to the purchaser at the time of delivery or send to him at the time of despatch an invoice setting forth such particulars in respect of such fertilizer, farm feed, agricultural remedy or stock remedy as may be prescribed.

[Sec 9 substituted by sec 7 of Act 60 of 1970 and by sec 10 of Act 24 of 1977.]

[a36y1947s10]10 Furnishing of particulars before administration of fertilizers, farm feeds and agricultural remedies

(1) Any person who at the request of the owner or the person in control of a thing administers for consideration any fertilizer, farm feed or agricultural remedy to the said thing, shall, before such administration, notify such owner or person of-

- (a) the purpose of such administration;
- (b) the registered name and number of the fertilizer, farm feed or agricultural remedy so to be administered;
- (c) the precautions to be taken before, during and after such administration.

(2) The notification referred to in subsection (1) may be furnished verbally provided it is confirmed in writing within three days after the administration concerned.

[Sec 10 repealed by sec 33 of Act 28 of 1961 and inserted by sec 11 of Act 24 of 1977.]

[a36y1947s11]11

[Sec 11 repealed by sec 34 of Act 28 of 1961.]

[a36y1947s12]12 Manufacture and sale of fertilizers and farm feeds containing substances derived from animal carcasses

No person shall manufacture or sell any fertilizer or farm feed containing bone or any other substance derived from an animal carcass, unless such bone or substance-

- (a) has been sterilized in such manner as may be prescribed; or
- (b) has, subject to the provisions of section 16, been imported in terms of a permit issued under the Animal Diseases and Parasites Act, 1956 (Act 13 of 1956).

[Sec 12 substituted by sec 12 of Act 24 of 1977.]

[a36y1947s13]13 Exclusion of any fertilizer, farm feed, agricultural remedy or stock remedy from operation of Act

The Minister may by notice in the Gazette exclude, subject to such conditions as he may determine, any fertilizer, farm feed, agricultural remedy or stock remedy from the operation of any or all of the provisions of this Act.

[Sec 13 substituted by sec 8 of Act 60 of 1970.]

[a36y1947s14]14 Designation of technical advisers and analysts

For the purpose of this Act, the Minister may from time to time designate persons, including officers, as-

(a) technical advisers who shall advise the registrar in regard to matters referred to them by the registrar; and

(b) analysts to analyse samples of fertilizers, farm feeds, agricultural remedies or stock remedies referred to them by the registrar, and to report thereon in the form and manner prescribed.

[Sec 14 amended by sec 35 of Act 28 of 1961 and substituted by sec 9 of Act 60 of 1970 and by sec 13 of Act 24 of 1977.]

[a36y1947s15]15 Power of entering premises, examinations, analysis of samples, and seizure

(1) The registrar may at all reasonable times-

(a) enter upon and examine any place, premises or vehicle in respect of which he has reason to believe that on or in it there is manufactured, processed, treated, prepared, graded, classified, packed, marked, labelled, held, bottled, removed, transported, exhibited, sold or used any fertilizer, farm feed, agricultural remedy or stock remedy, and examine or test any such fertilizer, farm feed, agricultural remedy, stock remedy or any ingredient thereof;

(b) examine all books and documents on or in any place, premises or vehicle referred to in paragraph (a) in respect of which he has reasonable grounds for believing that they relate to any fertilizer, farm feed, agricultural remedy, stock remedy or an ingredient thereof, and make copies of or extracts from such books or documents;

(c) examine any operations or processes carried out at any place or premises referred to in paragraph (a) in connection with the manufacture, processing, treatment, preparation, grading, classification, packing, marking, labelling, holding, bottling, removal, transport, exhibition, selling or use of any fertilizer, farm feed, agricultural remedy or stock remedy, and demand from the person in charge of such operations or processes, or the owner of or the person having the custody of any fertilizer, farm feed, agricultural remedy or stock remedy or an ingredient thereof, any relevant information or explanation relating to any such operations or processes, or fertilizer, farm feed, agricultural remedy, stock remedy or ingredient;

(d) demand from the owner or any person having the custody of any book or document referred to in paragraph (b) an explanation relating to any record or entry therein;

(e) seize any book, document, fertilizer, farm feed, agricultural remedy or stock remedy which may furnish proof of an offence in terms of this Act, or any quantity of any fertilizer, farm feed, agricultural remedy or stock remedy in respect of which there is reason to believe that any such offence has been committed, and remove from or leave on or in the place, premises or vehicle in question, any book, document, fertilizer, farm feed, agricultural remedy or stock remedy, or any quantity thereof, which has so been seized, and may in his discretion place on such book, document, fertilizer, farm feed, agricultural remedy or stock remedy, or the container thereof, such identification mark or seal as he may deem necessary;

(f) take samples or cause samples to be taken of any fertilizer, farm feed, agricultural remedy, stock remedy or an ingredient thereof, and open any container which contains or is suspected to contain anything used or intended for use in the manufacture, processing, treatment, preparation, grading, classification, packing

marking, labelling, holding, bottling, removal, transport, exhibition or sale of any fertilizer, farm feed, agricultural remedy or stock remedy, and examine, analyse, grade or classify such samples, or cause such samples to be examined, analysed, graded or classified.

(2) Where the registrar carries out any examination in terms of subsection (1) in the presence of any person affected thereby, he shall first produce his written authority to such person.

(3) Any sample taken in terms of subsection (1) shall-

- (a) be taken in accordance with the prescribed method;
- (b) be taken in the presence of the owner or the person having the custody of that fertilizer, farm feed, agricultural remedy, stock remedy or ingredient thereof, or, if such owner or person is not available, in the presence of any other witness; and
- (c) in the presence of such owner or person, or such witness, be divided into three parts, and each part shall be packed in a suitable container and sealed with a seal and be labelled or marked in such manner as the nature thereof permits, so that such sample may be readily identified.

(4) One part each of the sample which has been thus divided shall-

- (a) be handed or forwarded by registered post to such owner or person;
- (b) together with a certificate in the prescribed form be forwarded to an analyst who shall as soon as practicable test, examine or analyse the said part in accordance with the methods which the registrar may determine, and the result of such test, examination or analysis shall be recorded by such analyst on the prescribed form and be submitted to the registrar; and
- (c) be retained by the registrar.

(5) The owner of anything from which any sample referred to in subsection (1)(f) was taken, may claim from the registrar an amount equal to the market value of such sample.

[Sec 15 amended by sec 36 of Act 28 of 1961 and by sec 10 of Act 60 of 1970 and substituted by sec 14 of Act 24 of 1977.]

[a36y1947s16]16 Detention and sampling of imported fertilizers, farm feeds, seeds and remedies

(1) Any officer of the Department of Customs and Excise authorized thereto by the Secretary for Customs and Excise may detain any quantity of farming requisites landed at or imported through any port or place in the Republic, and may take samples thereof.

[Subsec (1) amended by sec 37(a) of Act 28 of 1961 and substituted by sec 2 of Act 17 of 1972.]

(2) The provisions of section fifteen relating to the taking of samples shall mutatis mutandis apply to the samples taken in terms of this section.

(3) Subject to the provisions of subsection (4) no person shall move or cause to be moved from such port or place the farming requisite so detained except with the written permission of such officer.

[Subsec (3) amended by sec 37(b) of Act 28 of 1961.]

(4) If an examination, analysis or test of such samples shows that any such farming requisite does not comply with the requirements of this Act, the Minister may -

- (a) order such farming requisite-
 - (i) to be destroyed without compensation; or
 - (ii) at the option of the importer to be removed from the Union within a specified period; or
- (b) permit the removal thereof from the port or place of entry subject to such conditions as he may determine.

[Subsec (4) amended by sec 37(c) of Act 28 of 1961.]

(5) If any farming requisite, which has been detained in terms of subsection (1), is found to comply with the requirements of this Act, no rent charges shall be payable by the importer in respect of such period of detention, or where the Railways and Harbours Administration is required to deliver or to forward such farming requisite, in respect of any portion of such period of detention which is subsequent to the presentation to the Railways and Harbours Administration of a delivery order, or a forwarding order, as the case may be.

[Subsec (5) amended by sec 37(c) of Act 28 of 1961.]

[a36y1947s17]17 Preservation of secrecy

Any person who discloses except to the Minister or to any other person for the purpose of the performance of his duties or the exercise of his functions under this Act or when required to do so by any court or under any law, any information acquired by him in the exercise of any duty or function under this Act, in relation to the business or affairs of any other person shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds or imprisonment for a period not exceeding twelve months.

[a36y1947s18]18 Offences and penalties

- (1) Any person who-
 - (a) fails to comply with the provisions of section 9;
 - (b) obstructs or hinders the registrar, any technical adviser or any analyst in the exercise of his powers or performance of his duties under this Act;
 - (bA) fails to make any statement or give any explanation if he is requested thereto by the registrar in the exercise of his powers or the performance of his duties under this Act;
 - (c) contravenes or fails to comply with the provisions of section 7, 10, 12 or 16 or with any condition imposed under section 3(3), 16(2) or 16(3)(d);
 - (c)bis acquires, disposes of sells or uses fertilizers, farm feeds, agricultural remedies or stock remedies contrary to a prohibition issued under section 7bis;
 - (e) tampers with any sample taken in terms of this Act, or with anything seized in terms of this Act;
 - (f) makes use, in connection with any fertilizer, farm feed, agricultural remedy or stock remedy, of any certificate, invoice or other document issued in respect of any other fertilizer, farm feed, agricultural remedy or stock remedy, or which is no longer valid;
 - (g) makes any false or misleading statement in connection with any fertilizer, farm feed, agricultural remedy or stock remedy-
 - (i) in an application for the registration thereof;
 - (ii) in any invoice issued in terms of section 9;
 - (iii) in any advertisement thereof;

- (iv) in the course of the sale thereof;
- (v) in an application for a permit referred to in section 7bis (1)(b);
- (vi) in a notice referred to in section 10;
- (vii) if he acts in accordance with the provisions of section 16(1)(b);
- (h) sells any fertilizer, farm feed, agricultural remedy or stock remedy upon the container of which a false or misleading statement in connection with such contents is printed or written;
 - (i) sells any fertilizer, farm feed, agricultural remedy or stock remedy which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold;
 - (j) having been duly summoned in terms of section 6(4)(a) to appear before the board, fails without lawful excuse so to appear;
 - (k) having appeared as a witness before the board, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
 - (l) fails to comply with the provisions of section 4A(1) or (3), shall be guilty of an offence and liable on conviction-
 - (i) in the case of a contravention under paragraph (a), (b), (bA) or (l) to a fine not exceeding five hundred rand or imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment; and
 - (ii) in the case of a contravention under paragraph (c), (c)bis, (d), (e), (f), (g), (h), (i), (j) or (k) to a fine not exceeding one thousand rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) The court convicting any person of an offence under this Act, may, upon the application of the prosecutor, declare any fertilizer, farm feed, agricultural remedy or stock remedy in respect of which the offence has been committed and all fertilizers, farm feeds, agricultural remedies or stock remedies of a similar nature to that in respect of which such person has been convicted, and of which such person is the owner, or which are in his possession, to be forfeited to the State.

(3) All fertilizers, farm feeds, agricultural remedies or stock remedies forfeited under this Act shall be destroyed or otherwise dealt with as the Minister may direct. [Sec 18 amended by sec 2 of Act 48 of 1950, by sec 38 of Act 28 of 1961 and by sec 11 of Act 60 of 1970 and substituted by sec 16 of Act 24 of 1977.]

[a36y1947s19]19 Jurisdiction of magistrate's court

Notwithstanding anything to the contrary in any other law contained a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

[a36y1947s20]20 Procedure and evidence

(1) In any criminal proceedings under this Act-

(a) any quantity of a fertilizer, farm feed, agricultural remedy or stock remedy in or upon any premises, place, vessel or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act shall, unless the contrary be proved, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;

[Para (a) amended by sec 39(a) of Act 28 of 1961 and by sec 17 of Act 24 of 1977.]

(b) any person who is proved to have tampered with any sample shall be deemed to have acted with fraudulent intent unless the contrary is proved; in question shall not, of itself be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(c) A certificate stating the result of an analysis or test carried in pursuance of the provisions of subsection (3) of section fifteen and purporting to be signed by the analyst who carried out such analysis or test shall be accepted as prima facie proof of the facts stated therein;

(d) Any statement or entry contained in any book or document kept by any manufacturer, importer or owner of a fertilizer, farm feed, agricultural or stock remedy, or by the manager, agent or employee of such person, or found upon or in, any premises occupied by, or any vehicle use in the business of such person, shall be admissible in evidence against him as an admission of the facts set forth in the statement or entry, unless it is proved that the statement or entry was not made by such person, or by any manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment.

[Para (d) amended by sec 39(b) of Act 28 of 1961 and by sec 17 of Act 24 of 1977.]

(2) No prosecution shall be instituted as a result of any analysis or test performed in terms of the provisions of section fifteen or section sixteen unless a copy of the analyst's certificate has been transmitted at least twenty-one days before the institution of such prosecution to the person who is to be the accused.

[a36y1947s21]21 Special defence in case of prosecutions

It shall be sufficient defence for a person charged with the sale of any fertilizer, farm feed, agricultural remedy or stock remedy in contravention of 7(1)(d) if he proves to the satisfaction of the court-

(a) that he purchased such fertilizer, farm feed, agricultural remedy or stock remedy under a registered name or mark as being the same in all respects as the article which he purported to sell;

(b) that he had no reason to believe at the time of the sale that it was in any respect different from such article;

(c) that he sold it in the original container and in the state in which it was when he purchased it; and

(d) that the container thereof complied with the prescribed requirements and was sealed and labelled or marked in the prescribed manner with the prescribe particulars.

[Sec 21 amended by sec 40 of Act 28 of 1960 and sec 12 of Act 60 of 1970 and substituted by sec 18 of Act 24 of 1977.]

[a36y1947s22]22 Acts or omissions by manager, agent or employee

(1) Whenever ant manager, agent or employee of any manufacturer, importer or owner of a fertilizer, farm feed, agricultural or stock remedy does or omits to any act which it would be an offence under this Act for such manufacturer. Importer or owner to do or omit to do, then unless it is prove that-

(a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the manufacturer, importer or owner; and

(b) all reasonable steps were taken by the manufacturer, importer or owner to prevent any act or omission of the kind in question; and

(c) it was not under any condition or in any circumstances within the scope of the authority or in the course of employment of the manager, agent or employee to do or omit to do acts whether lawful or unlawful of the character of the act or omission charged,

the manufacturer, importer or owner, as the case may be, shall be presumed himself to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

[Subsec (1) amended by sec 41 of Act 28 of 1961 and by sec 19 of Act 24 of 1977.]

(2) Whenever any manager, agent or employee of any such manufacturer, importer or owner does or omits to do an act which it would be an offence under this Act for the manufacturer, importer or owner to do or omit to do, he shall be liable to be committed and sentenced in respect thereof as if he were the manufacturer, importer or owner.

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the manufacturer, importer or owner.

[a36y1947s23]23 Regulations

(1) The Minister may make regulations-

(a) prescribing the manner in which fertilizers, farm feeds, agricultural remedies, stock remedies and sterilizing plants may be registered, the forms to be used for and the information to be furnished with any application for registration, and the fee to be paid for registration;

[Para (a) amended by sec 13(1)(b) of Act 60 of 1970.]

(b) prescribing the description and conditions under which any substance may be registered, imported or sold as a fertilizer, farm feed, agricultural remedy or stock remedy under any particular name or mark;

[Para (b) amended by sec 42(a) of Act 28 of 1961 and by sec 13(1)(c) of Act 60 of 1970 and substituted by sec 20(a) of Act 24 of 1977.]

(c) prescribing the manner in which and the time within which an appeal under section six must be noted and prosecuted;

(d) prescribing the particulars to be set forth in any invoice to be furnished under section nine;

(e) prescribing the composition, efficacy, chemical, physical or other property required in respect of any substance in order that it may be imported, sold or registered as a fertilizer, farm feed, agricultural remedy or stock remedy, as the case may be;

[Para (e) amended by sec 42(b) of Act 28 of 1961 and by sec 13(1)(c) of Act 60 of 1970 and substituted by sec 20(b) of Act 24 of 1977.]

(f) prescribing the limits within which any fertilizer, farm feed, agricultural remedy or stock remedy may be deficient in any of its ingredients and the proportion in which any preservative, antiseptic or other constituent may be present therein;

[Para (f) amended by sec 13(1)(c) of Act 60 of 1970.]

(g) prescribing requirements as to the mass and volume and containers in which fertilizers, farm feeds, agricultural remedies or stock remedies shall be packed, the manner in which they shall be packed into such containers, the manner in which such containers shall be sealed and labelled or marked and the particulars which shall appear on such labels and containers;

[Para (g) amended by sec 42(c) of Act 28 of 1961 and by sec 13(1)(d) of Act 60 of 1970 and substituted by sec 20(c) of Act 24 of 1977.]

(h) prescribing the processes by which fertilizers, farm feeds, agricultural remedies or stock remedies, or substances used in the manufacture of fertilizers, farm feeds, agricultural remedies or stock remedies shall be sterilized, and the manner of inspection of sterilizing plants;

[Para (h) amended by sec 13(1)(d) of Act 60 of 1970.]

(hA) prescribing the requirements with which any establishment shall comply, the practices which shall be followed in the operation of any undertaking at any establishment, the facilities which shall be available at any establishment, and the records to be kept and the information to be furnished in respect of any establishment and the operation of any undertaking at any establishment;

[Para (hA) inserted by sec 20(d) of Act 24 of 1977.]

(i) for preventing the adulteration of fertilizers, farm feeds, agricultural remedies or stock remedies or the tampering with containers thereof;

[Para (i) amended by sec 42(c) of Act 28 of 1961 and by sec 13(1)(d) of Act 60 of 1970.]

(j) prescribing the methods to be employed, the fees to be paid, and the certificates to be issued in respect of the examination, analysis or test of samples taken under this Act;

(k) for preventing the use of false or misleading statements in advertisements of fertilizers, farm feeds, agricultural remedies or stock remedies;

[Para (k) amended by sec 42(c) of Act 28 of 1961 and by sec 13(1)(d) of Act 60 of 1970.]

(l) requiring any person who has in his possession or under his control any fertilizers, farm feeds, agricultural remedies or stock remedies, to keep records relating thereto in the form and manner prescribed, and to render returns in the form and manner and at the times prescribed;

[Para (l) amended by sec 42(c) of Act 28 of 1961 and by sec 13(1)(d) of Act 60 of 1970.]

(lA)

[Para (lA) inserted by sec 13(1)(e) of Act 60 of 1970 and deleted by sec 20(e) of Act 24 of 1977.]

(m) prohibiting the disposal, acquisition or use of any farm feed as a fertilizer;

(n) in respect of any other matter under this Act which is to be prescribed, and generally for the efficient carrying out of the objects and purposes of this Act.

(2) Different regulations may be made under this section in respect of different classes or kinds of fertilizers, farm feeds, agricultural remedies and stock remedies, and in respect of different kinds of establishments and different classes or groups of persons.

[Subsec (2) amended by sec 42(c) of Act 28 of 1961 and by sec 13(1)(f) of Act 60 of 1970 and substituted by sec 20(f) of Act 24 of 1977.]

(3) Any regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, but not exceeding the maximum penalty prescribed by section eighteen.

(4) Before any regulations are made under this section, such regulations shall be published by the Minister in the Gazette together with a notice intimating that it is proposed to issue such regulations as regulations under this section within a stated period, but not less than four weeks as from the date of the said publication, and inviting interested persons to submit any objections to or representations concerning the proposed regulations: Provided that, if the Minister thereafter determines on any alterations in the regulations published as aforesaid, as a result of any objections or representations submitted thereanent, it shall not be necessary to publish such alterations, before finally issuing the regulations in terms of subsection (1).

(5) Any regulation involving financial matters shall be made in consultation with the Minister of Finance.

[Subsec (5) added by sec 13(1)(g) of Act 60 of 1970.]

[Sec 23 amended by sec 13(1)(a) of Act 60 of 1970.]

[a36y1947s23A]23A Limitation of liability

Except where it is expressly otherwise provided for in this Act, no compensation shall be payable by the State, the Minister or the registrar in respect of any act done in good faith under this Act.

[Sec 23A inserted by sec 21 of Act 24 of 1977.]

[a36y1947s24]24 Application of Act to South-West Africa

This Act and any amendment thereof shall apply also to the territory of South-West Africa, including the Eastern Caprivi Zipfel.

[Sec 24 repealed by sec 14 of Act 60 of 1970 and inserted by sec 3 of Act 17 of 1972.]

[a36y1947s25]25 Repeals the Fertilizers, Farm Foods, Seeds and Pest Remedies Act, 21 of 1917

[a36y1947s26]26 Short title

This Act shall be called the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947.

[Sec 26 amended by sec 43 of Act 28 of 1961 and substituted by sec 15 of Act 60 of 1970.]